

April 1989 is also without merit. The argument is based on the defeat of the 'special resolution' which moved that the scheme be implemented immediately. It is argued that the effect of that defeat was that the members had decided not to implement the scheme and therefore the defendants acted unlawfully in implementing the scheme. Counsel for the first defendant has submitted that the special resolution could not have been tabled as a special resolution (as ruled by the chairman of the meeting) as fourteen days' prior notice thereof had not been given to the members contrary to the requirements of a special resolution as defined in s 2 of the HUDC Act, and that the resolution would have been validly passed as an ordinary resolution on the basis of the voting. Accordingly, he submits that either the 'special resolution' took effect as an ordinary resolution or that it did not take effect at all, in which either event, the resolution passed at the EGM on 19 April 1987 called for the implementation of the scheme and therefore the first defendant acted properly in implementing it on 1 April 1989. I agree with this submission. As a special resolution, it was null and void. As an ordinary resolution, it was validly passed.

Counsel for the plaintiffs further submitted that even if insufficient notice had been given for the special resolution to be tabled, it was validly passed. In support of his contention, he referred to a passage in Horsley's *Meetings: Procedure, Law and Practice* (2nd Ed) which reads:

Where resolutions passed at a meeting convened by a notice which was invalid have been acted on without objection and adopted by acquiescence over a long period, such resolutions have been held to be valid and effective.

In my view, the facts of this case do not come within the principle stated in the passage. Here, the first defendant ignored the voting on the special resolution and implemented the scheme the moment the agreement with the plaintiffs ceased to take effect.

The interim injunction is set aside and the action is dismissed with costs. There will be an inquiry as to the damages suffered by the first defendant arising out of the interim injunction and an order that the same be paid by the plaintiffs to the first defendant.

Application dismissed.

Solicitors: *Drew & Napier; Choo & Joethy; Terry Ang & Partners; Toh, Tan & Partners.*

Reported by *Terence Tan Bian Chye*

A **Goh Siam Yong v Zacharia Norman Augustine & Anor**

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS
NO 331 OF 1989
CHAN SEK KEONG J
27 JULY 1989

B *Civil Procedure - Appeal - Damages assessed by deputy registrar in chambers - Appeal to judge in chambers - Whether right of appeal to High Court exists from decision of judge in chambers - Whether right of appeal restricted under Subordinate Courts Rules 1986, O 55 r 1(5) - Whether such rule ultra vires enabling Act - Subordinate Courts Rules 1986, O 55 r 1 - Subordinate Courts Act (Cap 321, 1985 Ed), s 47 - Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 21*

C The plaintiff claimed damages for personal injuries suffered in a traffic accident caused by the negligence of the first defendant. Upon interlocutory judgment being entered, damages were assessed by the deputy registrar in chambers at \$4,780.89. The defendants appealed against this decision to the district judge in chambers who reduced the damages to \$1,177.50. The plaintiff sought to appeal to the High Court and took out an application for a declaratory order that she has a right of appeal.

D **Held**, allowing the plaintiff's application:

(1) Section 47 of the Subordinate Courts Act (Cap 321, 1985 Ed) cannot justify the validity of O 55 r 1(5) of the Subordinate Courts Rules 1986. It does not authorize the making of rules of court which deny the right of appeal to the High Court. The statutory provision conferring the right of appeal to the High Court is actually found in s 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed). Accordingly, O 55 r 1(5) is ultra vires the Subordinate Courts Act.

(2) The Subordinate Courts Rules 1986 is subsidiary legislation made under the Subordinate Courts Act and is thus subject to challenge on the ground of being ultra vires the enabling Act. There being no relevant provision in the Subordinate Courts Act which empowers the general right of appeal to the High Court as conferred by s 21 of the Supreme Court of Judicature Act, any rule of court made under the Subordinate Courts Act which purports to restrict such right must be ultra vires.

[Editorial Note: The defendants have appealed to the Court of Appeal vide Civil Appeal No 83 of 1989.]

Legislation referred to
Interpretation Act (Cap 1, 1985 Ed) s 2
Subordinate Courts Act (Cap 321, 1985 Ed) s 47
Subordinate Courts Rules O 55 r 1(5)
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21

NS Kang for the plaintiff.
Axel Chan for the defendants.

Cur Adv Vult

I **Chan Sek Keong J:** The application before me raises an important point on the right of appeal to the High Court from a decision of a judge in chambers on appeal from a judgment, order or decision of the registrar.

The applicant is the plaintiff in MC Suit No 54 of 1988. She claimed against the defendants damages for

personal injuries suffered by her in a traffic accident caused by the negligence of the first defendant. The defendants failed to enter an appearance, in consequence of which the plaintiff obtained interlocutory judgment for damages to be assessed. The damages was assessed by the deputy registrar in chambers at \$4,780.89. The defendants appealed. The appeal was heard by a judge in chambers and he reduced the damages to \$1,117.50. The plaintiff filed a notice of appeal to the High Court against this reduced assessment. The defendants then applied to strike out the appeal on the ground that the plaintiff had no right of appeal. The application was heard by the deputy registrar. He made no order on the application so as to enable the plaintiff to apply to this court for a declaratory order that she has a right of appeal. This is the application before me.

Counsel for the defendants contends that the plaintiff has no right of appeal to the High Court on the ground that such right has been taken away by O 55 r 1(5) of the Subordinate Court Rules 1986 ('the 1986 Rules'). It is not disputed that the assessment of damages of the judge in chambers was made under this rule. The whole of O 55 r 1 reads as follows:

- (1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.
- (2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 111B to attend before the Judge on a day specified in the notice or on such other day as may be directed
- (3) Unless the Court otherwise orders, the notice must be filed within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.
- (4) Except so far as the Court may otherwise direct, an appeal under this Rule shall not operate as a stay of the proceedings in which the appeal is brought
- (5) The decision of the Judge in Chambers under this Rule shall be final.

The meaning and effect of r 1(5) is clear beyond any doubt. Counsel for the plaintiff does not dispute its meaning and effect but its validity. He contends that the sub-rule is ultra vires the enabling Act, viz the Subordinate Courts Act (Cap 321, 1985 Ed). Counsel for the defendants contends the contrary; he says that firstly, the sub-rule is authorized by s 47 of the Subordinate Courts Act (Cap 321, 1985 Ed), which provides as follows:

Subject to the provisions of the Supreme Court of Judicature Act relating to civil appeals from the subordinate courts to the High Court, the Rules of Court shall regulate and prescribe the procedure on appeals from a District Court exercising civil jurisdiction to the High Court.

and secondly, by s 21 of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) which provides as follows:

- (1) Subject to the provisions of this or any other written law, an appeal shall lie to the High Court from a decision of a

District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject matter exceeds \$2,000 or with the leave of the High Court if under that amount.

(2) Such appeals may be heard before one Judge provided that the Judge, if he thinks fit, may reserve any appeal for the decision of a court consisting of 3 Judges, and in such case the appeal shall be decided in accordance with the opinion of the majority of the Judges composing the High Court.

In my view, s 47 of the Subordinate Courts Act cannot justify the validity of O 55 r 1(5). That section provides for the making of rules of court to regulate and prescribe the procedure on appeals to the High Court. It does not authorize the making of rules of court which deny, simpliciter, such right of appeal. The statutory provision *conferring* the right of appeal to the High Court is not found in the Subordinate Courts Act but in s 21 of the Supreme Court of Judicature Act. It should be noted that s 21 makes no distinction between an interlocutory judgment or a final judgment, whether obtained in an interlocutory application or at the trial of an action. Accordingly, O 55 r 1(5) is ultra vires the Subordinate Courts Act.

The next issue is whether it is authorized by s 21 of the Supreme Court of Judicature Act. On this point, the contention of counsel for the defendants is that whilst s 21 confers a general right of appeal to the High Court from decisions of the subordinate courts, that right is expressly made subject to the provisions of any other 'written law', which expression is defined in s 2 of the Interpretation Act (Cap 1, 1985 Ed) to include any subordinate legislation. It is accordingly submitted that the 1986 Rules are subordinate legislation made under the Subordinate Courts Act and O 55 r 1(5) thereof has accordingly restricted the right of appeal of the plaintiffs in this case.

In my view, this argument has no merit for the following reasons: firstly, the 1986 Rules are undoubtedly subordinate legislation made under the Subordinate Courts Act. As such, their validity is subject to challenge on the ground of being ultra vires the Subordinate Courts Act. As there is no relevant provision in the Subordinate Courts Act which empowers the general right of appeal to the High Court conferred by s 21 of the Supreme Court of Judicature Act, any rule of court made under the Subordinate Courts Act which purports to restrict such right must be ultra vires.

The issue before me may be considered from another perspective. If this action had been tried in the normal way and the magistrate or district judge hearing it had found for the plaintiff and had assessed the damages payable by the defendants, there would have been no dispute as to the right of appeal of the plaintiff. Why then should the right of appeal of the plaintiff be taken away by what is no more than an administrative arrangement for the allocation of judicial work in the subordinate courts? This cannot be right, as otherwise rules of court can be

made for trials before the registrar which would result in the loss of the right of appeal to the High Court.

For the above reasons, I am of the view that O 55 r 1(5) is ultra vires and the plaintiff is entitled to appeal to the High Court against the assessment of damages of the district judge made in chambers in the present case. There will be a declaration in terms of the application, with costs to be paid by the defendants.

Application allowed.

Solicitors: NS Kang; Koh & Yang.

Reported by Mathavan Devadas

Re Letter of Request from the Court of New South Wales for the Prosecution of Peter Bazos (Deposition Proceedings)

HIGH COURT (SINGAPORE) - ORIGINATING MOTION NO 132 OF 1988
CHAN SEK KEONG J
15 MAY 1989

Conflict of Laws - Letter of request from foreign court for evidence to be taken and documents to be received in evidence - Minister issuing authorization to senior district judge to take such evidence - Delegation by Minister to senior district judge of power to appoint district judge or magistrate to take such evidence - Whether Minister had power to issue authorization - Whether delegation ultra vires - Whether Australia 'foreign State' under the Act - Extradition Act 1968, ss 43(1) & 46

Administrative Law - Certiorari - Application to quash Ministers' authorization on taking of evidence for foreign legal proceedings - Minister delegating appointment of district judge to take such evidence to senior district judge - Whether Minister had power to issue authorization - Whether delegation ultra vires - Extradition Act 1968, s 43(1) - Interpretation Act (Cap 1, 1985 Ed), s 30

Words and Phrases - 'Foreign State' - Extradition Act 1968, s 43(1) - Absurdity

This was an application by Elite Wood Products (Australia) Pty Ltd and Peter Bazos ('the applicants') for an order of certiorari to quash the authorization of the Minister of Law ('the Minister') given in writing ('the authorization') in exercise of his power under s 43(1) of the Extradition Act 1968 ('the 1968 Act'). Section 43 allowed the Minister to authorize a magistrate to take evidence for the purposes of a criminal matter pending in a court of a foreign state. The authorization was directed to the senior district judge, authorizing him or such other district judge or magistrate that he might nominate to take the evidence of certain persons and to receive certain documents as evidence (cumulatively 'the evidence') pursuant to a request from the Attorney General of Australia. This evidence was required for the prosecution in Australia of the applicants for certain offences. The senior district judge did not take the evidence himself but appointed another district judge to take the evidence. The applicants challenged the validity of the authorization on the grounds

A that under s 43, the Minister did not have the power to make the authorization; alternatively, that he had exceeded his power by delegating it to the senior district judge. The applicants argued that Australia is not a 'foreign State' as defined and moreover, there is no extradition treaty between Singapore and Australia. Furthermore, since Australia had been declared a Commonwealth country for the purpose of Part IV, it could not be a 'foreign State' under the same Act. The 1968 Act made a clear division between Commonwealth countries and a 'foreign State' in all its relevant provisions and these provisions, except for s 43, use both expressions whenever it is intended that they apply to both groups of territories. The legislative history of the 1968 Act and s 43 supported these arguments.

B The senior state counsel argued that to apply the definition of 'foreign State' to s 43(1) would lead to absurdity and thus should not be done. If s 43(1) did not allow Singapore to render assistance to Commonwealth countries but only non-Commonwealth countries, it would result in absurdity as more stringent procedures would apply to Commonwealth countries than to non-Commonwealth countries. Given the legislative history and the purpose for which s 43 was enacted, the words 'foreign State' must be given its plain and ordinary meaning to refer to any sovereign state other than Singapore.

Held, allowing the application for order of certiorari:

(1) The contentions of the applicants were simple and straightforward and involve no assumption whatever as to the intention of Parliament in enacting s 43 of the Extradition Act 1968. They merely require the court to give effect to the plain words thereof while the contentions of senior state counsel require the court to say that Parliament did not mean what it said in s 43.

(2) There was nothing in s 43 which remotely suggests that the expression 'foreign State' as used therein has a meaning other than the defined meaning. The result of giving the expression its defined meaning does not result in any absurdity as generally understood by the courts. An absurdity is a result which is manifestly inconsistent with the terms or defeats the object of the section or the statute, or a result which is manifestly nonsensical.

(3) Giving the expression its defined meaning only leads to a result which is not absurd but, in the instant case, merely inconvenient to the Commonwealth of Australia. The argument that Singapore did not intend to deprive Commonwealth countries of the benefit of s 43 does not stand up to scrutiny.

(4) The argument that there is an extradition treaty between Singapore and Australia, and therefore Australia is a foreign State, has no merit. Since Singapore's agreement to the scheme is not binding in the contractual sense, there was no binding agreement. Even if there were an agreement, it would not be an agreement equivalent to a treaty since it did not create obligations under international law as treaties would.

(5) The maxim delegatus non potest delegare applied to the delegation of the Minister of the power under s 43 of the 1968 Act. Administrative efficiency or convenience is not a valid reason in law for the Minister or any decision-making body in whom a statutory power is vested to delegate such power.

(6) Also, s 43(1) of the Act 'does not authorize the taking of evidence but a magistrate to take the evidence' [sic]. Under the Interpretation Act, a power to appoint or name a person to have and to exercise any power may be effected by either appointing that person by name or by his office.

(7) Here, the senior district judge had nominated another district judge to take the evidence. The Minister accordingly did